IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12288 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NARESH INDRAVADAN @ DALU RANA

Versus

COMMISSIONER OF POLICE

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Appearance:

1. Special Civil Application No. 12288 of 2002

HL PATEL ADVOCATES for Petitioner No. 1

MS HARSHA DEVANI, AGP for Respondent No. 1-3

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/05/2003

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenue has challenged his detention order dated 09-11-2002 by which he is detained as "Bootlegger" under the Prevention of Anti Social Activities Act, 1985 ("PASA" for short). Along with the detention order, the petitioner is also served with the grounds of detention on the same date. In the grounds of detention there is a reference of three

criminal cases, which are filed against the petitioner under the Bombay Prohibition Act. The detaining authority after considering the aforesaid criminal cases as well as after considering the statement of witnesses has passed the aforesaid order of detention. The said order of detention is under challenged at the instance of the detenu.

2. The learned advocate for the petitioner submitted that the last criminal case is registered against the petitioner on 06-09-2002 while the detention order is passed on 09-11-2002. It is submitted that there is delay of about two months in passing the detention order from the alleged last incident.

3. The learned A.G.P. on behalf of the State tried to explain the said delay by pointing out from the file. It is submitted on behalf of the State that there is no delay as from the date of arrest the order is passed within 2 days. The statement of the witnesses were recorded on 08-10-2002 and the same were verified on 08-11-2002 and the detention order was passed on 09-11-2002.

4. In this behalf, the learned advocate has relied upon a decision of this Court 2000(3) GLR 2696 more particularly in para 9 of the judgment. Considering the aforesaid judgment wherein this Court has discussed the aforesaid aspect at great length. In my view the whole exercise appears to have been done in a mechanical manner and here it could be said that there was an active application of mind.

5. In that view of the matter, the averment of the petitioner is required to be accepted as it is uncontroverted. In that view of the matter, the petition is required to be allowed on the ground of delay in passing the order of detention and accordingly the detention order is required to be quashed and set aside.

6. For the foregoing reasons, the petition is allowed. The order of detention dated 09-11-2002 is quashed and set aside. The detenue, Naresh Indravadan alias Dalu Rana, is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

Sd/-

[P.B.MAJMUDAR,J]

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'Bhavesh'